

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:06-00226-01

ANTHONY TYRONE MARTIN

MEMORANDUM OPINION AND ORDER

The court is proceeding on its own motion, pursuant to 18 U.S.C. § 3582(c)(2), to consider a reduction of defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008.

The court has received and considered the Original Presentence Investigation Report (PSI), the Judgment and Commitment Orders and Statement of Reasons, addendum to the PSI from the Probation Office, memoranda filed by defendant and the United States, and other matters of record. The court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

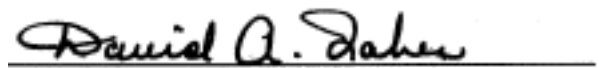
Having reviewed the materials of record, the court has determined that such a motion should be **DENIED**. In imposing

defendant's original sentence of 48 months - - a variance sentence thirty months below the applicable guideline range - - the court considered all the factors set forth in 18 U.S.C. § 3553(a) and imposed a sentence that was sufficient but not greater than necessary to satisfy the statutory objectives of sentencing. The original sentence imposed was reasonable and a further reduction would be inappropriate. See 1B1.10(b)(2)(B) ("[I]f the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and United States v. Booker, 543 U.S. 220 (2005), a further reduction generally would not be appropriate.").

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Probation Office, and the United States Marshal for the Southern District of West Virginia.

It is SO ORDERED this 13th day of April, 2009.

ENTER:


David A. Faber
Senior United States District Judge